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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Kerry McKelvey,

10 Plaintiff,

11 v.

12 Mitchell Miller Humphries, et al.,

13 Defendants.
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No. CV-23-08570-PCT-MTL

ORDER

15 Before the Court is Defendants' Motion for Partial Summary Judgment (Doc. 23).
16 The motion is fully briefed. (Docs. 23, 27, 30.)

17 In its motion, Defendants ask the Court to adopt *McHaffie v. Bunch*, 891 S.W.2d
18 822 (Mo. 1995), for the proposition that "once an employer admits respondeat superior
19 liability for a driver's negligence, it is improper to allow a plaintiff to proceed against the
20 employer on other theories of imputed liability." (Doc. 23 at 6 (emphasis removed).) The
21 Court ordered the parties to file supplemental briefs addressing whether the Court should
22 deny without prejudice Defendants' motion so that they may refile a motion for summary
23 judgment after the Arizona Supreme Court decides *Roaf v. Rebuck Consulting, et al.*,
24 CV-23-0233-PR. (Doc. 32.)

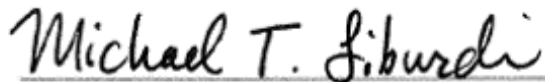
25 Both parties agree that the pending Arizona Supreme Court decision for *Roaf* may
26 control the issues in Defendants' motion. (Docs. 33, 34.) Defendants argue that the Court
27 should not deny without prejudice their motion because it is not judicially efficient under
28 Rule 1, Fed. R. Civ. P. (Doc. 33 at 2.) This argument, however, is unpersuasive. The

1 arguments made in the pending motion will likely require modification once the Arizona
2 Supreme Court issues the *Roaf* decision.

3 Accordingly,

4 **IT IS ORDERED** denying with leave to refile Defendants' Motion for Partial
5 Summary Judgment (Doc. 23).

6 Dated this 8th day of April, 2024.

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10 Michael T. Liburdi
11 United States District Judge
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